Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Appeal from Order No.379 of 2004

Shafeeq-ur-Rehman S/o Habib-ur-Rahman,
R/o Jahanabad, Tehsil and District-Pilibhit.

..... Appellant/Claimant

Versus

1. Sri Mohammad Ameen S/o Sri Shabbir Ahmad, R/o Mohalla Khushimal, Town-Tehsil & District Pilibhit.

2. The Oriental Insurance Company Ltd. Head Office at Oriental House, A-25/27, Asaf Ali Road, New Delhi, through its Branch Manager, Branch Office at Chhatri Chauraha, Pilibhit.

..... Respondent / Opp.parties

(2) Appeal from Order No. 306 of 2004

The Oriental Insurance Company Limited,
Nainital Road, Bhotia Parao, Haldwani
(Nainital).

..... Appellant

Versus

1.Shafeeq-ur-Rahman S/o Shri Habib-ur-Rahman Ra/o Jahanabad, Tehsil & District-Pilibhit.

2. Mohd. Amin S/o Shri Sabbir Ahmar, R/o Mohalla Khushimal Kasba Tehsil District-Pilibhit.

..... Respondents

Smt.Farida Siddiqui, learned counsel for the appellant / claimant.
Sri T.A.Khan, learned counsel for the respondent/Oriental Insurance Company.

Date: Aug. 19, 2006.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

(Delivered by Hon'ble B.S. Verma,J.)

Since both these appeals have been preferred against one and the same judgment questioning the amount of compensation, therefore both were heard together and common judgment is being passed.

2. The claimant-appellant preferred the appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of the amount of compensation against the judgment and award dated 30.6.2004 passed by the Motor Accident Claims Tribunal/I Fast Track Court, Nainital in Motor accident Claim Petition No. 266 of 1996, *Shafiq-ur-Rahman Versus Mohd.Amin and another,* whereby the Motor Accident Claims Tribunal **(hereinafter referred to as the Tribunal**) allowed the claim petition of the claimant for Rs.5,75,000/-against the Opp.party-Oriental Insurance Company.

3. The Opp.party-Oriental Insurance Company also preferred the appeal bearing No.306 of 2004 against the same judgment and award on the ground that the income of the injured-claimant has been calculated by the Tribunal in an arbitrary and illegal manner and the amount of compensation awarded is highly excessive.

4. First we are dealing the appeal No.379 of 2004 which was filed by the injured claimant for enhancement. Brief facts giving rise to this appeal are that on 26.10.1992 the claimant-Shafeeq-ur-Rahman was working in Truck No. 2593 as porter *(Palledar)*. At about 03.00 p.m. he was leading the gunny bags full of paddy in the truck which was parked on the bank of road. The opposite party No.1 Mohd.Amin, who was sitting on the

seat of driver in the truck, without intimating the claimant, inadvertently started the truck due to which the injured fell down from the truck ands sustained injuries on his back. His colleagues, who were doing *Palledari* work with him brought him to the Hospital at Pilibhit. The doctors, who were attending the claimant in the hospital, on his X-ray examination found that there is fracture on his spinal cord (backbone). Thereafter the claimant got him treated in Jawahar Lal Nehru Muslim University, Aligarh, where he remained under treatment with effect from 12.1.2002 to 10.1.2003. Thereafter he was brought to Delhi for further treatment. He was not cured despite the treatment received at Delhi and he has become bed ridden completely. The claimant alleged that due to fracture in his backbone he has become handicapped. At the time of accident the claimant was 30-year-old. He is the sole bread earner of his family consisting of his wife, a son and father and mother. It is alleged that he was earning Rs. 2000/- per month from Palledari work. The claimant filed the claim petition for the amount of Rs. 16,27,000/- as compensation.

5. The opposite parties contested the case by filing their separate written statement. The Opp.party No.1 denied the allegations levelled against him but admitted that on the date of accident he was owner of Truck No. U.R.K. 2593 and the said truck was insured with Oriental Insurance Company, Pilibhit and if any liability for payment of compensation is fixed that shall be paid by the Oriental Insurance Company.

6. The Opp.party No.2- Oriental Insurance Company denied the accident and also denied that the claimant got him treated medically from the different doctors at different hospitals for the injuries he sustained in the alleged accident for want of knowledge. In additional pleas it has been stated by the insurance company that the intimation of the accident was not given to the insurance company.

7. On the pleadings of the parties, the Tribunal framed the following issues :

1. Whether the accident took place due to rash and negligent driving of the driver of Truck No.URK 2593 on 26.10.1992 at 3.00 P.M. on Amriya-Sittarganj road in which the petitioner sustained grievous injuries?

2. Whether the petition is barred by time?

3. To what amount of compensation is the petitioner entitled and from whom?

8. The parties adduced oral as well as documentary evidence in support of their case. The Tribunal after going through the evidence decided all the issues in favour of injured claimant and allowed the claim petition for Rs. 5,75,000/- as compensation against the Oriental Insurance Company. It has also been ordered by the Tribunal that in case of failure in payment of the said amount within a period of one month from the date of order, the claimant shall get interest at the rate of 7% per annum from the date of award. Feeling aggrieved, the claimant as well as the Opp.party-insurance company have come up with these appeals.

9. We have heard the learned counsel for the parties and have gone through the record of the case.

The learned counsel for the injured claimant contended that the learned Tribunal while awarding the compensation has not considered that the claimant / appellant has suffered injuries which have resulted in permanent disability to the claimant/appellant. The compensation awarded to the injured claimant is too meager and is inadequate. The learned Tribunal did not calculate the appropriate amount while awarding the compensation in different counts. A perusal of the impugned judgment shows that the Tribunal has recorded finding in issue No.1 that the injured claimant sustained injuries while he was in the process of loading the truck by the bags full of paddy. The said truck was suddenly started by Opp.party No.1- Mohd.Amin, due to which the claimant fell down alongwith the bag full of paddy in to the earth and sustained injuries. Hence it cannot be said that the claimant/appellant was negligent. The claimant produced himself in the witness box as P.W.1 and Sri Ahmad Minya as P.W.2 in support of his case. P.W.1 injured claimant stated on oath that he was doing *Palledari* work and his monthly income was Rs. 2000/-. He also deposed that due to injury on his backbone he has become permanently disabled. The injured claimant has filed the certificate (paper No.45) Ga/2) issued by the Chief Medical Officer, Pilibhit on 07.4.2004 who on examination found that the injured suffers from *traumatic paraparesis*, *which* is permanent disability, and he comes under the category of physically orthopaedically handicap person. The P.W.1 and P.W.2 have been cross-examined by the insurance company. In the cross-examination the injured claimant stated that he has spent Rs. 60,000-70,000/- in his treatment. The

injured-claimant has filed some prescriptions, X-ray plates and X-ray reports. The insurance company does not dispute the disability of the claimant, which is permanent in nature. The insurance company also filed affidavit of Sri Mahendra Singh Dhami, an employee of the company as documentary evidence. Sri Mahendra Singh Dhami has also produced himself as D.W.1. In the statement on oath he admitted the accident but he stated that nobody could tell the truck number. He also stated that nobody could tell which vehicle caused the said accident. The claimant did not cross-examine the D.W.1. The Tribunal has examined the evidence adduced on behalf of the parties and has recorded clear findings that at the relevant time the accident was caused by rash and negligent act of driver of the truck in question. The Tribunal was satisfied that because of the accident aforesaid, the claimant/appellant had become paraplegic. The Tribunal has awarded compensation to the claimant as follows:-

1.	For loss of earning upto the date of trial or likely to cause loss in future earning.	Rs.2,10,000.00
2.	The expenditure incurred on treatment.	Rs. 50,000.00
3.	For the special diet	Rs. 10,000.00
4.	Expenditure incurred to carry the claimant to different places for treatment.	Rs. 5,000.00
5.	Damages for mental and physical shock, pain and suffering.	Rs.1,00,000.00
6.	For future treatment	Rs.1,50,000.00
7.	For inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.	Rs. 50,000.00

10. The compensation as above awarded by the Tribunal in accordance with the law laid down by the Hon'ble Supreme Court in case ***R.D. Hattangadi versus.***

Pest Control (India) Pvt. Ltd. and Others, reported in ***1995 ACJ 366 (SC).*** In the said case law the Apex Court has held as under:-

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. The pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas the non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate the two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit, (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

11. It has come in evidence that the claimant /appellant was a porter *(Palledar)* and was earning Rs. 2000/- per month. He was aged about 30 years at the time of accident. Because of the accident, the claimant/appellant suffered serious injuries resulting into 100 per cent disability and paraplegia below the waist. The Opp.party-Oriental Insurance Company has not adduced any evidence rebutting these facts. The vehicle (Truck No.URK 2593) was validly insured with the Oriental Insurance Company on the date of accident. The Tribunal has awarded a reasonable amount in each

count which includes Rs. 1,50,000/- for expenditure to be incurred on future treatment. Hence we are of the opinion that the amount awarded by the Tribunal under these heads does not require any interference.

12. In view of above, we find no force in appeal No.379 of 2004 filed by the injured – claimant (appellant) and the same is dismissed.

13. Since we have held that the amount of compensation awarded to the injured-claimant is just and proper, the appeal filed by the Oriental Insurance Company bearing No.306 of 2004 against the impugned award does not have any merit and the same is also dismissed.

14. The amount, if deposited in appeal be remitted to the Motor Accident Claims concerned within a period of one month.

(B.S.Verma,J.) **(P.C.Verma,J.)**

Date: Aug. 19 , 2006.

P.Singh